

REMARKS

I. Status of Claims

Claim 1 is amended to remove “comprising” transitional language, and to incorporate the subject matter of claim 2. The preamble of claim 8 is amended in accordance with the amendment to claim 1, from which claim 8 depends. Claims 2 and 4-7 are canceled without prejudice or disclaimer.

No new matter is added. Accordingly, Applicants respectfully request entry of the Amendment. Upon entry of the Amendment, claims 1 and 8 will be pending in the application.

II. Response to Claim Rejection Under 35 U.S.C. § 103

Claims 1-8 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Castenmiller (U.S. Patent No. 4,874,626) in view of Clapp et al. (U.S. Patent No. 5,156,876) and Sejpal et al. (U.S. Patent No. 3,849,580).

Initially, without acquiescing to the merits, claim 2 and 4-7 are canceled.

Applicants respectfully traverse the § 103(a) rejection of claims 1 and 8, at least based on the following.

Use of fats and oils in present claim 1 differs from the working Examples of Castenmiller:

Applicants submit that deletion of “comprising” transitional language excludes additional or unrecited elements. Therefore, it is clear that present claim 1 is a foamable water-in-oil type emulsion, which is contained in an aerosol container, wherein the emulsion comprises an emulsifier in the amount of 0.5 to 6.0 wt% based on the emulsion; wherein the oil in the water-in-oil type emulsion is an edible oil which has a cloud point (ASTM) of about 4.4°C (40 °F) or

lower, the container comprises a gas propellant partially dissolved in said water-in-oil emulsion; the container has a discharging nozzle for discharging the emulsion with the gas propellant as a foam therefrom; the foam is formed at the time of jetting; and wherein the emulsifier is at least one member selected from the group consisting of glycerin fatty acid ester, sucrose fatty acid ester, sorbitan fatty acid ester, and polysorbate.

Applicants respectfully submit that the above amendments to claim 1 differentiates the foamable water-in-oil-type emulsion of present claim 1 from the disclosures of Castenmiller.

Difference in the amount of emulsifier used in the present invention and the working Examples of Castenmiller:

Claim 1 is amended to incorporate the subject matter of claim 2, with the exception of an "enzyme-processed lecithin."

Working Example 5 of Castenmiller includes Admul® emulsifier in the amount 0.2% of the emulsion, and native soyabean lecithin in the amount 0.4% of the emulsion. However, currently presented claim 1 recites "the emulsifier is at least one member selected from the group consisting of glycerin fatty acid ester, sucrose fatty acid ester, sorbitan fatty acid ester, and polysorbate," and thus excludes "enzyme-processed lecithin."

Therefore, the amount of Admul® emulsifier of working Example 5 of Castenmiller is outside the range of the amount of the emulsifier as claimed in present claim 1, i.e., 0.5% to 6.0% of the emulsion.

Packing a composition already containing gas into a container is not necessary in the present invention:

In the present invention, the gas serves two roles— first, discharging emulsion from the container, and second, discharging the emulsion from the container as foam.

When a composition already containing gas (bubbles), as described in Castenmiller, is packed in a container and another gas is subsequently added to the container so as to obtain pressure necessary for discharge, bubbles which are previously present in the composition become small and disappear due to pressurization of the inside of the container. Therefore, the emulsion cannot be discharged as a foam. Moreover, since the gas dissolves in the composition, the gas previously present in the composition and the gas subsequently filled for the pressurization are admixed and cannot be distinguished.

In view of the above, Applicants respectfully submit that claims 1 and 8 are patentable over Castenmiller. Furthermore, neither Clapp nor Sejpal overcomes the deficiencies in Castenmiller with respect to the present claims, as discussed above. Accordingly, Applicants respectfully request reconsideration and withdrawal of the § 103(a) rejection of claims 1 and 8 based on Castenmiller in view of Clapp and Sejpal.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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